PETITION FOR WRIT OF CERTIORARI

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(1)

Supreme Court, U.S.
FILED

No. ——— 06-1442 APR 26 2007

OFFICE OF THE CLERK

In the Supreme Court of the United States

PRENTIS RUCKER, JR.,
Petitioner,

v.

JOHN E. POTTER, POSTMASTER GENERAL,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Eric D. Hall
Counsel of Record
GERALD D. PISZCZEK, CO., L.P.A.
412 North Court Street
Medina, OH 44256
(330) 723-2200
(330) 723-2126 fax

Counsel for Petitioner

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTION PRESENTED

Whether an employee who files a civil suit from an EEO Decision within Ninety (90) days of the date and receipt of that Decision, but more than Ninety (90) days after the right to sue letter is mailed, has timely filed his civil suit.

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OPINIONS BELOW

The ruling of the United States Court of Appeals for the Sixth Circuit dated January 26, 2007 affirming the decision of the District Court was not recommended for full-text publication and is reproduced at App. A at 1a.

The order of the United States District Court of the Northern District of Ohio dismissing the plaintiff's complaint dated July 27, 2005 is reproduced at App. B and C at 7a and 14a.

JURISDICTION

The order of the United States Court of Appeals for the Sixth Circuit sought to be reviewed was entered on January 26, 2007. This petition is timely filed under 28 U.S.C. Section 2101 and Supreme Court Rule 13.1 because it is being filed within 90 days of the entry of the order sought to be reviewed. This court has jurisdiction to review the order of the United States Court of Appeals for the Sixth Circuit pursuant to U.S.C. Section 1254.

STATUTORY PROVISIONS INVOLVED

The relevant statutory provision is 42 U.S.C. § 2000e-16 (c) and 28 U.S.C. § 1915(e) set out at App. F at 22a.

STATEMENT OF CASE

The jurisdiction of the district court was invoked under 39 U.S.C. Section 409(a) (U.S. Government Defendant). The plaintiff brought claims for race discrimination, religious discrimination, and age discrimination. The district court dismissed plaintiff's complaint pursuant to 28 U.S.C

§ 1915(e)(2)(B). The district court further certified, pursuant to 28 U.S.C. § 1915 (a) (3) that an appeal from that decision could not be taken in good faith.

A. Summary of the Allegations in the EEO Claim and Complaint

Petitioner Prentis Rucker was employed by the United States Postal Service ("USPS") as a carrier at the Cleveland, Ohio post office until his forced resignation on July 6, 2004. He filed an internal administrative equal employment opportunity ("EEO") claim August 23, 2004 claiming that (1) he was the victim of a barrage of disciplinary actions from October 20, 2003 through June 2004, ultimately culminating in his resignation: (2) USPS management tampered with his mail for a four-day period ending December 4, 2003; and (3) he was scheduled to return to work from an emergency placement on November 8, 2003, the date of his father's burial. Rucker was not paid monies owed to him under an arbitration award and union settlement dated January 27, 2004. Rucker was not paid any monies until he started his EEO claim. On October 29, 2004, a mediation conference was conducted at which time Rucker inquired about the monies owed to him. Rucker was told that his money was in a desk at Station B. The USPS had full knowledge of Rucker's P.O. Box and mailing address. Rucker's claim were denied, on the grounds that it constituted an inappropriate collateral attack on the outcome of a proceeding in another forum. The administrative determination, mailed to Rucker on January 13, 2005, advised that, if he was "dissatisfied with the final agency decision, [he] may file a civil action in an appropriate U. S. District Court within 90 calendar days of [his] receipt" of the decision. The final agency decision was dated April 1, 2005. Rucker filed his civil action pro se in

the district court on May 11, 2005, well within 90 days of the final agency decision.

B. The Decisions Below

The District Court dismissed the complaint, holding that the Plaintiff had failed to meet the minimum pleading requirements of Federal Civil Rule 8 to set forth claims upon which relief could be granted. The District Court further held that the Plaintiff's civil action was untimely filed beyond the 90 day limit.

The Court of Appeals affirmed the judgment of the district court. The court stated in its decision that the record before the court was unclear whether the EEO decision was received by Rucker and, if so, when. Despite the this unresolved issue, the court held that Rucker's civil action was filed untimely. Based upon the court's conclusion that his suit was untimely, the court did not address Rucker's assignment of error with respect to the sufficiency of his complaint. The Court of Appeals did issue a full written opinion.

REASONS FOR GRANTING THE PETITION

This case presents an important issue whether a civil action is timely filed when there is a question whether the EEO decision was actually received and, if so, when. Simply stated, pro se litigants who timely file a civil action within 90 days of the date of a final agency decision should not have their cases dismissed but rather should have their day in court.

I. EQUITABLE TOLLING APPLIES IN THE CASE BELOW WHEN A GENUINE ISSUE OF FACT EXISTS AS TO WHETHER MR. RUCKER RECEIVED THE EEO DECISION AND, IF SO, WHEN.

The District Court stated in its Order that even if Rucker's pleadings were sufficient, he did not comply with the requirement that the Complaint be filed 90 days after the receipt of his right-to-sue letter. Equitable tolling of the time for filing a Title VII action is available only in compelling cases which justify departure from established procedures. See *Puckett v. Tennessee Eastman, Co.*, 889 F.2d 1481, 1486 (6th Cir. 1989). The standard of review of a district court's decision regarding equitable tolling is abuse of discretion. *Opportunity Comm'n vs. Kentucky State Police Dep't*, 80 F.3d 1086, 1094 (6th Cir.), cert. denied, 136 L. Ed. 2d 302, 117 S. Ct. 385(1996). There are five factors to consider when determining the appropriateness of equitably tolling a statute of limitations: 1) lack of notice of the filing requirement; 2) lack of constructive knowledge of the filing requirement; 3) diligence in pursuing one's rights; 4) absence of prejudice to the defendant; 5) the plaintiff's reasonableness is remaining ignorant of the particular legal requirement. See *Andrew v. Orr*, 851 F.2d 146, 151 (6th Cir. 1998). The propriety of equitable tolling must necessarily be determined on a case-by-case basis. See *Jarrett v. U.S. Sprint Commc'ns Co.*, 22 F.3d 256, 259- 260 (10th Cir. 1994).

The District Court in its Order dismissing Rucker's Complaint never indicated when Rucker actually received the EEO decision and right-to-sue letter, and when or if he actually received them. A fact necessary to determine whether Rucker is entitled to an equitable tolling of the 90-day limitations period. Allowing Rucker to proceed on merits of

his claims would not have prejudiced the Respondent on this matter. An evidentiary hearing should have been held in the District Court to determine this important issue. The Court of Appeals' decision affirming the district court's decision in light of the unanswered and unresolved issue of Rucker's actual receipt of the EEO final agency decision is exactly the lack of notice that would entitle a litigant to equitable tolling of the Ninety (90) day limitations period. It was an abuse of discretion of the courts below to continue to deny Rucker his day in court on this issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Eric D. Hall
Counsel of Record
GERALD D. PISZCZEK, CO., L.P.A.
412 North Court Street
Medina, Ohio 44256
Fax 723-2126
330-723-2200

Counsel for Petitioner

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 05-4143

[Filed January 26, 2007]

PRENTICE RUCKER, JR., *Plaintiff-Appellant*,	)
v.	)
JOHN E. POTTER, POSTMASTER GENERAL, *Defendant-Appellee.*	)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

BEFORE: COLE, MCKEAGUE, Circuit Judges; BREEN, District Judge.*

J. DANIEL BREEN, District Judge. Plaintiff-Appellant, Prentice Rucker, Jr., appeals the district court's order

* The Honorable J. Daniel Breen, United States District Judge for the Western District of Tennessee, sitting by designation.

granting dismissal in favor of the Defendant, John E. Potter, Postmaster General. The district court held that Rucker's *pro se* complaint alleging workplace discrimination was frivolous. We **AFFIRM.**

OPINION

I. BACKGROUND

A. Facts

Rucker was employed by the United States Postal Service ("USPS") as a carrier at the Cleveland, Ohio post office until his resignation on July 6, 2004. He filed an internal administrative equal employment opportunity ("EEO") claim August 23, 2004 alleging that (1) he was the victim of a barrage of disciplinary actions from October 20, 2003 through June 2004, ultimately culminating in his resignation; (2) USPS management tampered with his mail for a four-day period ending December 4, 2003; and (3) he was scheduled to return to work from an emergency placement on November 8, 2003, the date of his father's burial. Because these assertions were made outside the 45-day period within which an aggrieved person may initiate an administrative action pursuant to 29 C.F.R. § 1614.105(a)(1), the claims were rejected as untimely. Rucker also averred that he was not paid monies owed to him under an arbitration award and union settlement dated January 27, 2004. These funds were awarded through an internal grievance process separate from the EEO procedure. This claim was also denied, on the grounds that it constituted an inappropriate collateral attack on the outcome of a proceeding in another forum. The administrative determination, mailed to Rucker on January 13, 2005, advised that, if he was "dissatisfied with the final agency decision, [he] may file a civil action in an appropriate U.S. District

Court within 90 calendar days of [his] receipt" of the decision.

B. Prior Litigation

On May 11, 2005, a *pro se* complaint was filed by Rucker in the United States District Court for the Northern District of Ohio, alleging in its entirety as follows:

> I am filing a complaint of discrimination in the workplace by the U.S. Postal Service. My claim is based on Race, Religion, Age and etc. The bombardment of discriminatory action by management at Station B began in Oct. of 2003 until June of 2004. The actions of management and others that conspired with them caused me to resign on July 6, [2004].

Attached to the pleading were copies of approximately 30 documents, none of which were referenced in the complaint.

The district court granted Rucker's motion to proceed *in forma pauperis* and dismissed his complaint as frivolous pursuant to 28 U.S.C. § 1915(e). This timely appeal followed.

II. ANALYSIS

A. Standard of Review

This court reviews *de novo* a district court's order dismissing a complaint as frivolous under § 1915(e). *Brown v. Bargery*, 207 F.3d 863, 866 (6th Cir. 2000) (citing *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)). Although filings by *pro se* litigants are to be liberally construed, *Owens v. Keeling*, 461 F.3d 763, 776 (6th Cir.

2006), § 1915(e)(2) requires the court to dismiss a case upon a determination that the complaint is frivolous, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant immune from the relief sought. 28 U.S.C. § 1915(e)(2)(B). A complaint "is frivolous where it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S. Ct. 1827, 1831-32, 104 L. Ed. 2d 338 (1989). "A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Mayer v. Mylod*, 988 F.2d 635, 638 (6th Cir. 1993) (citation omitted).

B. Discussion

Federal employees who believe they have suffered discrimination must consult an EEO counselor "prior to filing a complaint in order to try to informally resolve the matter." 29 C.F.R. § 1614.105(a). The employee may file a civil suit in federal court within 90 days of receipt of notice of final action by the agency on his complaint. 42 U.S.C. § 2000e-16(c). Because it is not jurisdictional, this requirement, similar to a statute of limitations, is subject to waiver, estoppel and equitable tolling. *Seay v. Tenn. Valley Auth.*, 339 F.3d 454, 469 (6th Cir. 2003); *Truitt v. County of Wayne*, 148 F.3d 644, 646-47 (6th Cir. 1998) (citing *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393, 102 S. Ct. 1127, 71 L. Ed. 2d 234 (1982)). Equitable tolling is "available only in compelling circumstances which justify a departure from established procedures." *Puckett v. Tenn. Eastman Co.*, 889 F.2d 1481, 1488 (6th Cir. 1989).

The agency's final decision in this matter was sent, according to the certificate of service appended to the determination, to Rucker's post office box on January 13,

2005 by certified mail. The record before this court is unclear[1] whether the EEO decision was received by Rucker and, if so, when. Rucker argues on appeal that the date of receipt is necessary to determine whether he is entitled to equitable tolling and that an evidentiary hearing should have been conducted in order to obtain that information. However, there is a rebuttable presumption that mail is received by the person to whom it is addressed and that the 90-day limit commences five days after the right to sue letter is mailed. *See Banks v. Rockwell Int'l N. Am. Aircraft Operations*, 855 F.2d 324, 325-26 (6th Cir. 1988); *Cook v. Providence Hosp.*, 820 F.2d 176, 179 n.3 (6th Cir. 1987); *Hunter v. Stephenson Roofing, Inc.*, 790 F.2d 472, 474-75 (6th Cir. 1986). The presumption may be rebutted with proof by the claimant that he did not in fact receive notification within that period. *Graham-Humphreys v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552, 557-58 (6th Cir. 2000). The 90-day period, plus five days, expired on April 18, 2005. Rucker has not presented any evidence that notice of the decision was not received within that period. Nor has he offered any basis for a finding that this is the type of compelling case to which application of equitable tolling is appropriate. Accordingly, the district court properly dismissed the complaint filed May 11, 2005, as untimely.[2] *See Arredondo v. Brushwellman, Inc.*,

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[1] Although the record includes a copy of a certified mail receipt indicating that Rucker signed for the notice letter on January 29, 2005, he continued to argue through counsel in oral argument before this court that it was not received.

[2] The district court also held that, in addition to being untimely filed, the complaint fell below the standards set forth in Fed. R. Civ. P. 8, which requires "(1) a short and plain statement of the grounds upon which the court's jurisdiction depends, . . . (2) a short and plain statement of the claim showing that the pleader is

202 F.3d 267, 1999 WL 1253077, at *1 (6th Cir. 1999) (district court's dismissal as frivolous under § 1915(e) proper where plaintiffs complaint filed outside 90-day limitation set forth in Title VII).

Finally, although Rucker argues that the district court should have permitted him to amend his complaint, the contention is without merit. Section 1915(e)(2) requires the court to screen and dismiss complaints "even before . . . the individual has had an opportunity to amend the complaint." *McGore*, 114 F.3d at 608-09. Regardless of the district court's failure to grant the request, an amended complaint cannot salvage an untimely claim. *Boatner v. Henderson*, 7 F.App'x 367, 368 (6th Cir. 2001).

III. CONCLUSION

Based on the foregoing, the judgment of the district court is **AFFIRMED**.

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entitled to relief, and (3) a demand for judgment for the relief the pleader seeks." However, based on this court's conclusion that the suit was untimely, it need not address Rucker's assignment of error with respect to the sufficiency of the complaint.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CASE NO. 1:05 CV 1208

[Filed July 27, 2005]

PRENTICE RUCKER, JR., Plaintiff,

v.

JOHN E. POTTER, POSTMASTER GENERAL, Defendant.

MEMORANDUM OF OPINION AND ORDER

On May 11, 2005, Prentice Rucker, Jr. filed this *in forma pauperis* action against John E. Potter, Postmaster General of the United States Postal Service (USPS) based on discrimination in the work place. For the reasons stated below, this action is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)

Background

The document which Mr. Rucker captions as his complaint states only that the USPS discriminated against him

based on "race, religion, age and etc." He asserts that a "bombardment of discriminatory action[s] by management at Station B began in October of 2003 until June of 2004." (Compl. at 1.) He claims that as a result of USPS management and others he felt compelled to resign from his position "on July 6, 2005."[1]

Attached to the complaint is a document captioned "EEO Appeal, Case #4C-440-0273-04." The document is the "Table of Contents" for the appeal Mr. Rucker filed with the E.E.O.C. Office of Federal Operations. The appeal is listed first on the Table as Postal Form (PS) 3573, Notice of Appeal dated February 14, 2005. The third item listed is a copy of the E.E.O.C.'s dismissal of his complaint and Notice of Right to Sue, dated January 13, 2005.

A review of the E.E.O.C.'a decision to dismiss Mr. Rucker's race, color, religion, age and retaliation complaint indicates that it was based on his failure to comply with the applicable time limits contained in 29 C.F.R. § 1614.105, and for failing to state a claim regarding an arbitration award. The E.E.O.C. provided an extensive explanation of its regulations, procedures and relevant case law regarding the issue of timeliness and plaintiffs failure to provide any evidence that he was not aware of the time limit for contacting an E.E.O.C. counselor.

In his complaint before this court, Mr. Rucker does not address the dismissal of his E.E.O.C. complaint or the basis upon which it was dismissed. Further, he does not address or

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[1] Considering the fact that the complaint was filed prior to July, 2005, this is obviously a typographical error which should read: "July 6, 2004."

explain why he filed this civil action on May 11, 2005 when the Notice of Right to Sue is dated January 13, 2005 and the Certificate of Service indicates that the Dismissal was sent to Mr. Rucker's post office box by certified mail on the same date.

Standard of Review

Although *pro se* pleadings are liberally construed, *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520 (1972), a district court shall dismiss an *in forma pauperis* claim under section 1915(e) if the claim is frivolous. A claim is frivolous if it lacks an arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319 (1989); *Lawlar v. Marshall*, 898 F.2d 1196 (6th Cir. 1990).

Failure to State a Claim
Right-to-Sue Letter

This action lacks an arguable basis in law. As a threshold matter, the Supreme Court has determined that filing a copy of the right-to-sue letter is insufficient to commence an "action and does not toll the time period for filing a complaint. *See Baldwin County Welcome Ctr v. Brown*, 466 U.S. 147, 151 (1984) (per curiam). Unlike the complaint in *Brown*, Mr. Rucker has filed more than a Notice of Right to sue in this court. However, given the paucity of facts alleged in the complaint (which the court will address below), the court and defendant are left to decipher from his E.E.O.C. appeal which issues he seeks to raise in his complaint before this court. The fact that his complaint simply sets forth discrimination based on "race, religion, age and etc." burdens the defendant to pick and choose which facts are relevant to his complaint and what relief he may be seeking. With no

more explanation than the fact that he was discriminated against at work, this pleading cannot be deemed the commencement of a civil action. Furthermore, the fact that the court accepted the filing cannot be viewed as grounds for equitable tolling, because the Supreme Court in *Brown* rejected the very argument based on similar facts. *Id.* at 149-51.

Mr. Johnson does not disclose when he received the right-to-sue letter attached to the complaint. However, it is clear that there are more than 90 days between the January 13, 2005 date of the Notice and the date on which he filed his complaint in this court. Thus, even if the pleadings were sufficient, he did not comply with requirement that complaint be filed within 90 days after receipt of his right-of-sue letter.

Untimely Filing

In order to satisfy the prerequisites of an employment discrimination action, an aggrieved employee must file a timely charge of discrimination with the E.E.O.C. and act upon an E.E.O.C. right to sue letter. *See Puckett v. Tennessee Eastman, Co.*, 889 F.2d 1481, 1486 (6th Cir. 1989). If the claimant chooses to file a civil action under Title VII it must be filed within 90 days of the date of the right to sue letter from the E.E.O.C. *See* 42 U.S.C. § 2000e-5(f)(1); *see also Cleveland Newspaper Guild, Local 1 v. Plain Dealer Publ'g Co.*, 839 F.2d 1147, 1150 (6th Cir. 1988). Although the time for filing a Title VII action is not jurisdictional, *see Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982); *Banks v. Rockwell Int'l N. Am. Aircraft Operations*, 855 F.2d 324, 326 (6th Cir. 1988), equitable tolling, waiver, or estoppel are available only in compelling cases which justify departure from established procedures. *See Puckett*, 889 F.2d at 1488.

Mr. Rucker has not explained why he waited nearly five months from the date the Notice of Right to Sue letter before he commenced this action. Considering the fact that his original E.E.O.C. complaint was dismissed as untimely, there is every reason to believe he is aware that time limitations exist with which he must comply. Although he does attach a copy of the appeal he filed in the E.E.O.C. Office of Federal Operations on February 14, 2005,[2] and all the documents that support that appeal, his explanation to the E.E.O.C. regarding his untimely E.E.O.C. charge fails to address the issue. He states, in relevant part: "I would like to reiterate that the notice of dismissal states that issues raised in my complaint were untimely... My response to that is 'far from the truth.' I have not made such an effort but merely to show the coutinuos and progressive infliction of mental suffering at the hands of management, perpetrating the deplorable act of discrimination by way of harassment." (E.E.O.C. Appeal at ¶20.)

Considering the circumstances outlined, equitable tolling of the 90-day limitations period is unwarranted. *Coleman v. John Thomas Batts, Inc.*, No. 98-1834, 1999 WL 645420, at *2 (6th Cir. Aug. 13, 1999). Thus, Mr. Rucker is not entitled to equitable tolling and his complaint is dismissed.

Conclusory Allegations

Even if Mr. Rucker were not time-barred, his complaint would fall short of Federal Civil Rule 8 pleading requirements. Although the Supreme Court has clarified that, at the pleading stage, a plaintiff is not required to allege facts

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[2] In reality, the 'complaint' is just a cover sheet to the Notice of Appeal petition Mr. Rucker filed.

to support a prima facie case of discrimination, *Swierkiewiez v. Sorema*, 122 S.Ct. 992 (2002)(employment discrimination complaint need not contain specific facts establishing a *prima facie* case under the *McDonnell Douglas* [*v. Green*, 411 U.S. 792 (1973)] framework), this holding did not eliminate the basic tenets of notice pleading.

> Rule 8 of the Federal Rules of Civil Procedure requires, in relevant part:
>
> (1) a short and plain statement of the grounds upon which the court's jurisdiction depends... (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

FED. R. CIV. P. 8(a). Even under the liberal notice pleading requirements of Rule 8 and the liberal perspective in which *pro se* complaints are generally viewed, the complaint does not contain even the minimum requirements of a "short and plain statement" of a claim showing entitlement to relief. *See* FED. R. CIV. P. 8(a); *Vector Research. Inc. v. Howard & Howard Attorneys P.C.*, 76 F.3d 692, 697 (6th Cir. 1996)("'Under the liberal federal system of notice pleading, all that a plaintiff must do in a complaint is give a defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.'")(quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

Clearly, Mr. Rucker is claiming he was discriminated against based on, at least, his age, race and religion. What he does not claim is his status in any protected class or the relevant statutes upon which he is seeking relief from the

court. Moreover, he does not set forth any prayer for relief in his pleading. Legal conclusions alone are not sufficient to present a valid claim, and this court is not required to accept unwarranted factual inferences. *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987); *see also Place v. Shepherd*, 446 F.2d 1239 (6th Cir. 1971) (conclusory section 1983 claim dismissed). Despite plaintiffs conclusory assertion that he was unlawfully terminated, the allegations of the complaint do not set forth facts which support a claim of employment discrimination under Title VII. *See e.g., McDonald Douglas v. Green*, 411 U.S. 792, 802 (1973). There is no reasonable suggestion that he was replaced with or that the defendant sought to replace him with a similarly qualified person who was not a member of his protected group. *See Shah v. General Electric Co.*, 816 F.2d 265, 267-68 (6th Cir. 1987); *Burton v. State of Ohio*, 798 F.2d 164, 165 (6th Cir. 1986). This action is therefore appropriately subject to dismissal under 28 U.S.C. § 1915(e). *See Parker v. Wal-Mart Stores, Inc.*, No. 97-6151, 1999 WL 183460, at *1 (6th Cir. Mar. 15 1999).

Accordingly, the request to proceed *in forma pauperis* is granted and this action is dismissed as legally frivolous under section 1915(e). Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3) that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

/s/ Donald C. Nugent 7/27/05
DONALD C. NUGENT
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CASE NO. 1:05 CV 1208

[Filed July 27, 2005]

PRENTICE RUCKER, JR.,	)
Plaintiff,	)
	)
v.	)
	)
JOHN E. POTTER, POSTMASTER GENERAL,	)
Defendant.	)

JUDGMENT ENTRY

This Court having contemporaneously filed its Memorandum of Opinion in this case, it is therefore ORDERED that this action is dismissed pursuant to 28 U.S.C. § 1915(e). Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

/s/ Donald C. Nugent 7/27/05
DONALD C. NUGENT
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CASE NO. 1:05 CV 1208
JUDGE NUGENT

[Filed May 11, 2005]

PRENTICE RUCKER, JR.,	)
Plaintiff,	)
	)
-vs-	)
	)
JOHN E. POTTER (POSTMASTER	)
GENERAL) EASTERN AREA AGENCY,	)
Defendant.	)
	)

COMPLAINT

I am filing a complaint of discrimination in the work place by the U.S. Postal Service. My claim is based on Race, Religion, Age and Etc. The bombardment of discriminatory action by management at Station B began in Oct. of 2003 until June of 2004. The actions of management and others that conspired with them caused me to resign on July 6, 2005.

CIVIL COVER SHEET
1:05-CV1208
JUDGE NUGENT

a) **PLAINTIFFS**
Prentis Rucker, Jr

DEFENDANTS
John E. Potter, Postmaster General
U.S. Postal Service (Eastern Area, Agency)

b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF_____.

(216) 322-1456 Pro Se

c) **ATTORNEYS**
Prentis Rucker Jr.
9508 Parkview Ave
Cheve, Ohio 44104

BASIS OF JURISDICTION
☒ 2 U.S. Government Defendant

ORIGIN
☒ 1 Original Proceeding

NATURE OF SUIT
CIVIL RIGHTS
☒ 442 Employment

CAUSE OF ACTION
Employment Discrimination

REQUESTED IN COMPLAINT
DEMAND $
$400,000

SIGNATURE OF ATTORNEY OF RECORD
/s/ Prentis Rucker Jr.

APPENDIX E

UNITED STATES POSTAL SERVICE
EQUAL EMPLOYMENT OPPORTUNITY CASE
IN THE MATTER OF

Appeal No. 01A52580
Agency Case-No: 4G-440-0273-04

[Filed April 1, 2005]

Prentis Rucker, Jr.,	)
Appellant	)
	)
v.	)
	)
John E. Potter, Postmaster General,	)
U. S. Postal Service (Eastern Area)	)
Respondent.	)
	)

AGENCY RESPONSE TO APPEAL

The agency submits that it has addressed all issues of the subject appeal in the agency's dismissal, dated January 13, 2005.

To date, no brief has been received from appellant in support of his appeal.

Appellant failed to comply with the applicable time limits for filing with regard to Issue (1), Issue when he was the

recipient of a barrage of progressive disciplinary actions beginning October 20, 2003 which culminated in his resignation on July 6, 2004; Issue (3) when from November 29, 2003 through December 4, 2003, his mail was tampered with by management; and Issue (4) when on or about November 8, 2003, after he was placed on Emergency Placement, management scheduled him to return to work on the day his father was buried. In accordance with EEOC Regulations contained in part 29 C.F.R. 1614.107 (a) (2), an aggrieved individual must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory. Here the record clearly establishes that appellant did not contact a Counselor until August 23, 2004, which is 48 days after the date of July 6, 2004 appellant alleged in the incident described in Issue (1), 263 days after the alleged incident described in Issue (3); and

* * *

[p.4]

Therefore, the complaint as cited in **Issue (2)** above is **dismissed for failure to state a claim** in accordance with EEOC Regulation 29 C.F.R. 1614.107(a)(1).

COMPLAINANT'S APPEAL RIGHTS

Right to file a civil action

If you are dissatisfied with this final agency decision, you may file a civil action in an appropriate U.S. District Court within 90 calendar days of your receipt of this decision. If you choose to file a civil action, that action should be captioned *Prentiss Rucker, Jr. v. John E. Potter, Postmaster General, U.S. Postal Service*. You may also request the court

to appoint an attorney for you and to authorize the commencement of that action without the payment of fees, costs, or security in such circumstances as the court deems just. Your application must be filed within the same 90-day time period for filing the civil action.

Appeal to the Equal Employment Opportunity Commission

In lieu of filing a civil action, you may appeal to the Equal Employment Opportunity Commission within 30 calendar days of the date of your receipt of this decision, or, if you are represented by an attorney, within 30 calendar days of your attorney's receipt of the decision. The appeal must be in writing and filed with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, DC 20036-9848, or by personal delivery or facsimile. The complainant should use PS Form 3573, Notice of Appeal/Petition, (attached to the agency's decision) and should indicate what he or she is appealing. Any supporting statement or brief must be submitted to the EEOC within 30 calendar days of filing the appeal. A copy of the appeal and any supporting documentation must also be submitted to the agency's designated office at: Office of EEO Compliance and Appeals, U S Postal Service, Eastern Area, Post Office Box 3000, Warrendale PA 15095-3000. In or attached to the appeal to the EEOC, you must certify the date and method by which service of the appeal was made on the agency's office.

Failure to file within the 30-day period could result in the EEOC's dismissal of the appeal unless you explain, in writing, extenuating circumstances which prevented filing within the prescribed time limit. In this event, extending the time limit and accepting the appeal will be discretionary with the EEOC.

If you file an appeal with the EEOC's Office of Federal Operations, you may thereafter file a civil action in an appropriate U.S. District Court within 90 calendar days of your receipt of the Office of Federal Operations' decision. A civil action may also be filed after 180 calendar days of your appeal to the EEOC, if you have not received a final decision on your appeal.

/s/ Sandra L. Mitchell
Sandra L. Mitchell
(A) Manager, EEO Compliance and Appeals

Attachment:

1. Certificate of Service
2. Postal Form 3573, "Notice of Appeal/Petition" (Complainant and Complainant's Representative, if an attorney)

APPENDIX F

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE PART V. PROCEDURE CHAPTER 123. FEES AND COSTS

28 U.S.C. § 1915. Proceedings in forma pauperis

(e) (1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

(A) the allegation of poverty is untrue; or

(B) the action or appeal--

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

TITLE 42. THE PUBLIC HEALTH AND WELFARE CHAPTER 21. CIVIL RIGHTS EQUAL EMPLOYMENT OPPORTUNITIES

42 U.S.C. § 2000e-16 Nondiscrimination in Federal Government employment

(c) Civil action by party aggrieved. Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717(a) [subsec. (a) of this

section], or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706 [42 USCS § 2000e-5], in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.